

United States
Circuit Court of Appeals

For the Ninth Circuit.

YEE SING JONG, on Behalf of YEE DONG
TUN, Detained,

Appellant,

vs.

JOHN D. NAGLE, Commissioner of Immigration,
Port of San Francisco, California,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Southern Division.

Filed

JAN 27 1930

PAUL P. OBRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

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San Francisco, California.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Fran-
cisco, Calif.

District Court of the United States, Northern Dis-
trict of California (Southern Division).

Clerk's Office.

No. 20,063-L.

YEE SING JONG,

Petitioner,

vs.

JOHN D. NAGLE,

Respondent.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please issue

1. Petition for writ, except Exhibit "A."
2. Order to show cause.
3. Supplemental amendment to petition.
4. Appearance of respondent.
5. Order denying and dismissing petition.
6. Substitution of attorney and appearance.

7. Petition for appeal—with assignment of errors.
8. Notice of appeal.
9. Order allowing appeal.
10. Order directing transmission of original exhibits.
11. Citation on appeal.

EDDY KNAPP,

(Signature)

Attorney for Appellant.

Filed Nov. 15, 1929. [1*]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 20063-L.

In the Matter of YEE DONG TUN, Son of Citizen, on Habeas Corpus—27028/4-9 S.S. “PR. PIERCE,” 7-11-28.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable United States District Judge, Now Presiding in the United States District Court, in and for the Northern District of California, Second Division:

It is respectfully shown by the petition of the undersigned, that YEE DONG TUN, hereafter in this petition referred to as the “detained,” is unlawfully imprisoned, detained, confined and re-

*Page-number appearing at the foot of page of original certified Transcript of Record.

strained of his liberty by John D. Nagle, Commissioner of Immigration for the Port of San Francisco at the Immigration Station at Angel Island, County of Marin, State of Calif., Northern District and Southern Division thereof; that the imprisonment, detention, confinement and restraint are illegal and that illegality thereof consists in this, to wit:

That it is claimed by the said Commissioner that the said detained is a Chinese person and alien not subject or entitled to admission into the United States under the terms and provisions of the Acts of Congress of May 5th, 1882; July 5th, 1884; November 3d, 1893, and April 29th, 1902; as amended and re-enacted by Section 5 of the Deficiency Act of April 7th, 1904, which said acts are commonly known and referred to as the Chinese Exclusion or Restriction Acts; and the Immigration Act of 1924; and that he, the said Commissioner, intends to deport the said detained away from and out of the United States to the Republic of China, by direction of the Secretary of Labor, who has just dismissed the appeal in said case. [2]

That the Commissioner claims that the said detained arrived at the Port of San Francisco on or about the 11th day of July, 1928, and thereupon made application to enter the United States as a son of a native thereof, and that the application of the said detained was denied by the Commissioner of Immigration and a Board of Special Inquiry, and that an appeal was thereupon taken from the excluding decision of the said Commissioner of Im-

migration and the said Board of Special Inquiry to the Secretary of Labor and that the said Secretary thereafter dismissed the said appeal; that it is claimed by the said Commissioner that in all of the proceedings had herein the said detained was accorded a full and fair hearing; that the action of the said Commissioner and the said Board of Special Inquiry and the said Secretary was taken and made by them in the proper exercise of the discretion committed to them by the statute, and in accordance with the regulations promulgated under the authority contained in said statutes.

But, on the contrary, your petitioner alleges, upon his information and belief, that the hearing and proceedings had herein, and of the said Board of Special Inquiry, and the action of the said Secretary was and is in excess of the authority committed to them by the said rules and regulations and by said statutes, and that the denial of the said application of the said detained to enter the United States as the son of a native-born citizen thereof was and is an abuse of the authority committed to them by the said statutes in each of the particulars hereinafter set forth; and that there is not sufficient evidence to sustain the said adverse action of the said Board of Special Inquiry and the said Secretary of Labor in denying the application in said case:

I.

Your petitioner alleges, upon his information and belief, that the evidence presented before the said Commissioner, and the said Board of Special In-

quiry, and the said Secretary, upon application of the said detained to enter the United States [3] showing that the father of the said detained, Yee Quing Sheck, was a resident of Kew How Village, Hoy San (Sun Ning) District, China, and that the identifying witness and said father and their prior landing files, together with the applicant, were all examined covering a wide and multitude of various matters; that the testimony of the said people, before the immigration authorities, shows that they were interrogated substantially as to every conceivable thing that occurred, or would have been likely to have occurred during their lives, or come within their observation, of which each could have been expected to have any knowledge; that the father has mentioned this applicant as his son upon every occasion when testifying before the immigration authorities during many years last past, giving for him the same name and age consistent with that now given and he was likewise mentioned by —— the witness herein when testifying before the immigration service giving for him the same name and age consistent with that now given; which said evidence is now hereby referred to with the same force and effect as if set forth in full herein, and was of such a conclusive kind and character establishing the American nativity of the father of the said detained, and hence showing the said detained to be the son of a native-born citizen of the United States, and which said evidence was of such a legal weight and sufficiency that it was an abuse of discretion on the part of the said Commissioner and the said

Board and the said Secretary to deny the said detained the right of admission into the United States and instead thereof, to refuse to be guided by said evidence; and the said adverse action of the said Commissioner, the said Board and the said Secretary was, your petitioner alleges, upon his information and belief, arrived at and was done in denying the said detained the fair hearing and consideration of his case to which he was entitled. Said action was done in excess of the discretion committed to the said Secretary and the said Board, and to the said Commissioner of Immigration, and your petitioner al., [4] upon his information and belief that the said action of the said Secretary and the said Commissioner and the said Board was influenced against the said detained and against his witnesses solely because of his being of the Chinese race, and is seeking admission into the United States upon the ground of being a citizen thereof. That your petitioner is unable to *to* procure or present or file herewith a copy of the said immigration record. That the detained is found, by the Board of Special Inquiry, "to be about the age claimed, that he is familiar with much of the history of his alleged father's family as given in previous cases of members of the family; he made several statements, which he later corrected, but I believe this was caused rather by his youth than by any intention to make deliberate misstatements. No fault is to be found in his demeanor." That the said applicant bears a strong family resemblance to this said father, as is noted by the said immigration author-

ities. Yet, notwithstanding which, they have refused to be guided by the evidence and have decided adversely thereto.

Your affiant not having the record in his possession for the *enlightment*, of the Court, he hereunto annexed a copy of the brief filed by Roger O'Donnell, Esq., of the Washington Bar, which is now part and *partial* of said immigration file, as Exhibit "A"; and also your affiant annexes hereunto as Exhibit "B" the report of the Board of Special Inquiry denying the said case. Your affiant will require a report of the Board of Review at Washington and file it later in connection with this petition, the same not now being within the jurisdiction of this court.

That it is the intention of the said Commissioner of Immigration to deport the detained out of the United States and away from the land of which he is a citizen by the SS. "Pr. Taft," sailing from this port on August the 16th, 1929, at the hour of 4:00 P. M., and unless this Court intervenes to prevent said deportation the said detained will be deprived of [5] residence within the land of his citizenship.

That the said detained is in detention at the immigration station in Marin County, at Angel Island, and cannot for said reason verify said petition upon his own behalf; that said petition is verified by your petitioner herein, at the said detained's request and as his next friend, upon his behalf and in his name.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein as prayed for,

directed to the said Commissioner, commanding and directing him to hold the body of the detained within the jurisdiction of this court and to present the body of the said detained before this court at a time and place to be specified in said order, together with the time and cause of his detention, so that the same may be inquired into to the end that the said detained may be restored to his liberty and go hence without day.

Dated at San Francisco, Cal., this 15th day of Aug., 1929.

YEE SING JONG.

GEO. A. MCGOWAN,
Attorney for Petitioner and Detained Herein. [6]

United States of America,
State of California,
City and County of San Francisco,—ss.

The undersigned, being first duly sworn, deposes and says:

That your affiant is the petitioner in the foregoing petition; that the same has been read and explained to him and he knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief; and as to those matters he believes it to be true.

YEE SING JONG.

Subscribed and sworn to before me this 15th day of August, 1929.

[Seal]

R. H. JONES,

Notary Public, in and for the City and County of San Francisco, State of California. [7]

EXHIBIT "A."

* * * * *

NOTE.

There has just been received from the attorney a letter inclosing copy of the "FONG FOY MONTHLY MAGAZINE," attached hereto, printed in Canton, China, in April or May of this year, containing an article concerning the kidnaping of YEE QUING SHECK'S nephew, rough translation of the material portion of this article being as follows:

Iet Hoy, Kew How Village.—Yee Hong Wo, who is an American citizen, and who kidnapped Yee Shin Jung's grandson and took him to the bandit stronghold, was captured the end of last year by Captain Lee Sun Guey, who took him, with his wife and children, to Gong Moon City, where Yee Hong Wo and his wife were shot.

This evidence corroborates to the fullest extent Yee Quing Sheck's testimony in this connection, as well as the article in the San Francisco newspaper above referred to; further, since counsel at San Francisco was unaware of the existence of this evidence at the time the case was pending at the port it is hoped that appropriate consideration will be given to it by the appellate authorities. [8]

EXHIBIT "B."

27028/4-9

ex S. S. Pr. Pierce

7-11-28

In the Matter of YEE DONG TUN, Son of a Citizen.

R. W. HANLEN—Chairman,

R. A. PLUMLY—Member,

L. M. ROBERTS—Member and Typist,

C. J. JUNG—Interpreter.

SUMMARY.

8/10/28.

BY CHAIRMAN.—This applicant is applying for admission as the son of YEE QUING SHECK, who was first admitted to the United States, ex s. s. "Chiyo Maru, on Dec. 29, 1911, as the son of YEE YIN DOCK, Court Record Native of the United States. The al. father has since made three trips to China, and is shown from out records to have departed from this port on the essential trip on November 21, 1916, returning on November 19, 1918, the applicant's birthdate being given as October 30, 1926, and returned to the United States with the applicant.

The applicant appears to be about the age claimed and is quite intelligent for a boy of his age. His testimony shows that he is familiar with much of the history of his al. father's family as given in previous cases of members of the family; he made sev-

eral statements, which he later corrected, but I believe this was caused rather by his youth than by any intention to make deliberate misstatements. No fault is to be found in his demeanor. The al. father is stolid in manner, was very self-possessed during his examination, and although he was confronted with statements which he had previously made and which were in disagreement with his present testimony, he displayed no emotion, merely contenting himself in one instance that maybe he had forgotten facts when he gave his previous testimony, and in another denying that he had made the previous statements shown in our record. [9]

As between the testimony of the applicant and that of his al. father at the present time, only two discrepancies worthy of note have developed—one of these relates to an al. cousin of the applicant named YEE YOOK MING; the applicant claims that this al. cousin was born in Canton City, never lived in the applicant's village, and that he, the applicant, had never seen YEE YOOK MING; while the al. father testifies that this boy is now nine years old, was born in the applicant's native village, and is now living there and attending school in that village. The other discrepancy relates to the location of the schoolhouse in the applicant's native village; the al. father places the schoolhouse on the row immediately next to the applicant's home; while the applicant places this schoolhouse one row farther away, stating that there is a row of houses intervening between the schoolhouse and his home.

Our file covering the al. father, S. F. No. 27028-3-6 contains two letters ostensibly written by WONG SHEE, *alias* Mrs. YEE YING TAK, al. mother of YEE QUING SHECK, and al. paternal grandmother of the applicant. These letters convey the information that YEE KAY SHUCK, *alias* YEE QUONG LOOT, is not the son of the writer, and obtained his original admission to the United States by fraudulent means. These letters obviously refer to the al. father in the present case and the present applicant with the information that the present applicant is the son of YEE KWONG NIN. There is much information in our records to corroborate the statements contained in these letters regarding YEE QUING SHECK'S fraudulent entry, and a copy of these letters has been referred to the U. S. Consul-General at Hongkong, China, for the purpose of making an investigation there.

The contents of these letters have not as yet been disclosed to the applicant, as it was thought inadvisable to do this before learning of the Consular's investigation in Hongkong. I move that further action in this case be deferred [10] pending the result of the Consular investigation mentioned.

By Member PLUMLY.—I second the motion.

By Member PLUMLY.—I concur.

April 10, 1929.

By CHAIRMAN.—As noted in the previous summary of this case, the applicant is applying for admission as the son of YEE QUING SHECK, and al. son of YEE YIN DOCK, a court record native

of the U. S. The applicant's right to admission, is contingent upon proof that he is a blood son of YEE QUING SHECK and that YEE QUING SHECK is a blood son of YEE YIN DOCK. The applicant has been in detention for a considerable period due to the fact that communications to this office have been to the effect that YEE QUING SHECK is not a son of YEE YIN DOCK, and that the present applicant is not the son of YEE QUING SHECK, the principals failing or refusing to produce for examination a witness who could definitely substantiate or refute the contents of these communications.

YEE QUING SHECK, the al. father in the present case, was born in China and was first admitted to the United States on the claim that he is the son of YEE YIN DOCK, his mother's name having been given as WONG SHEE. This office is in receipt of two letters—one being signed "Mrs. Yee Ying Duck," or "Wong Shee," or "Yee Wong Shee," and the other being signed "Mrs. Yee Ying Tak." Both of these letters recite that the al. father and the applicant are not the son and grandson respectively, of the writer, who claims to be the wife of YEE YIN DOCK, the person on whom the status of the al. father and the applicant in the present case depends. In order to dispell any doubt as to the identity of the writer of these letters, several efforts have been made by this service to have the wife (or more properly the widow, YEE YIN DOCK now being dead) appear at the U. S. Consulate at Hongkong, China, in order that she

might be questioned regarding [11] the contents of the letters received, and regarding the membership of the family of YEE YIN DOCK. Thus far, it has not been possible to secure the appearance of Mrs. Yee Yin Dock at the American Consulate for the purpose desired. This office has made request through the Attorney of Record in the case for the production of Mrs. Yee Ying Dock, but these requests have met with refusal to present this most essential witness at the place desired.

The applicant was re-examined today and was made acquainted with the contents of the letters mentioned. He corroborated in part the contents of the letters by stating, that his al. father, the man who brought him to the United States, is really named "YEE KAY SHUCK," and that YEE KAY SHUCK has had three daughters, who died; the al. father in the present case denied at his hearing in this case that he was ever been known by the name YEE KAY SHUCK. The applicant also states that he does not know the name of his paternal grandfather, and that the person he previously named as his paternal grandfather, is not his own grandfather; the applicant also stated today that his paternal grandmother died about three years ago in his home in China, while the previous testimony in the present case was to the effect that the applicant's paternal grandmother is now living in China. The applicant's statements today show that the writer of the letters mentioned is familiar with the family of YEE KAY SHUCK and tends to confirm the statements made by this writer that

the al. father in the present case is not really a son of YEE YIN DOCK.

Our records contain further corroboration of some of the matters mentioned by Mrs. Yee Yin Dock in her letters. One of her statements is to the effect that YEE QUON JEUNG or YING HAY (apparently a younger brother of YEE YIN DOCK or YEE SIN JEUNG) took her husband's remains to China with him on the S. S. Pr. Wilson, which sailed from San Francisco about the 9th month of C. R. 15 (October or November 1926).

[12] Our records show that a person by the name of YEE OTT or YEE KING CHANG departed from this port on November 13, 1926 on the S. S. Pr. Wilson, and that this person is the subject of our file No. 15679/5-8. An examination of the records shows that the subject of the file mentioned is known as YEE OTT, YEE SING OTT, and YEE KOON JUNG. This YEE OTT has testified before this Service on several occasions that he had a brother in the United States named YEE SIN JUENG, which is the marriage name given for YEE YIN DOCK; YEE OTT also testified that his brother, YEE SIN JEUNG had two sons, and gave the names of these sons as YEE GWING SOON and YEE QWING POY; this latter statement of YEE OTT is also in agreement with the written statement of Mrs. Yee Yin Dock. The connection between YEE OTT and YEE YIN DOCK is commented on at length in the report made by Law Officer W. H. Wilkenson, dated May 11, 1917, in File No. 16055/9-10.

The fact that the applicant's statements and our records corroborate so much of the information contained in these letters written by Mrs. Yee Yin Dock, takes these letters out of the class of irresponsible communications, and as the principles have refused to present Mrs. Yee Yin Dock for examination as to the authenticity of these letters, I believe that their contents can be considered as material evidence in the present case, and that the essential facts are as related in these letters. It is not believed that these letters are in the handwriting of Mrs. Yee Dock, as when she was examined at this station, she was unable to write, but the records of this station show from the testimony of Chinese persons that it is quite customary for a Chinese woman, who cannot write, to have some person write her letters for her, and it can reasonably be assumed that Mrs. Yee Yin Dock has followed this custom and is the author of the letters in question.

An unfavorable feature of the present case is the testimony of the al. father regarding the whereabouts of two al. [13] brothers, whom he names as YEE QUING SOON & HEE QUING POY, the al. father stating that these two brothers are now in Canton City, and adding that he saw and talked to YEE QUING SOON in 1927, when the latter came home to visit the ancestral graves. In 1924 YEE YIN DOCK produced letters to show that YEE GWING POY AND YEE GWING SOON had been killed in battle during that year, testimony being given in the case of YEE YOOK HON, now num-

bered 12017/30618. The statements of the al. father in the present case regarding his al. brothers tend to discredit his claim that he is actually a son of YEE YIN DOCK. YEE YIN DOCK also testified in 1924 that his two sons, YEE GWING POY & YEE GWING SOON, were employed in Government officers in Canton City. While the present al. father disclaims any knowledge of such circumstances.

Before a decision is entered in the present case, the al. father should be made acquainted with the contents of the letters written by Mrs. Yee Yin Dock and given an opportunity to make whatever statements he may desire in regard to the contents of these letters. The al. father is not present, and it is not definitely known to this board just when and where he can be reached. I move that further action in this case be deferred pending the appearance of the al. father before officers of this Service.

By Member LINWOOD.—I second the motion.

By Member OLIVER.—I concur.

April 10, 1929.

MEMORANDUM.

From information contained in the letters received from the attorney or record, it is believed that the al. father, YEE QUONG SHOCK, is now in Pittsburgh, Pa., and that his appearance will take place at that office. At the time he was examined in this case, he made the statement that he [14] had destroyed receipts received for expenses in connection with his al. father's funeral; since

that time, there has been presented through the Attorney of Record a receipt reputed to be for payment of expenses of the funeral of YEE SEEN JUNG, with the information that this receipt had been sent to the al. father from China. It might be advisable to ascertain if this is a genuine receipt and if the mortician issuing it will furnish information to whom it was issued; photographs of YEE QUONG SHOCK are contained in the files of the present case, as are also photographs of YEE OTT, who is said to have been the person taking the remains of the Deceased to China.

May 6, 1929.

By CHAIRMAN.—Hearings in this case were concluded at this station on April 10, 1929, final action being deferred at that time for the purpose of allowing YEE QUING SHECK, the al. father to examine the latter's purporting to have been written by WONG SHEE, wife of YEE QUING SHECK'S father. YEE QUING SHECK was examined at Pittsburg, Pa., on April 27, of this year and was shown the letters mentioned; he claims that the contents of the letters are untrue and that the letters were written by his enemies. Many efforts were made by this service to have the author of these letters appear at the U. S. Consulate at China and the records show that YEE QUING SHECK was informed of the Government's desire in this matter thus giving him ample opportunity to definitely prove or disprove the authorship of these letters, which is accredited to his al. mother. Un-

der the circumstances, YEE QUING SHECK'S contentions that the letters were written by some unknown enemies can be given very little if any weight.

A summary made by the chairman of the board on the 10th ultimo lists the outstanding features of this case. It is my opinion that the developments in this case have shown that [15] YEE QUING SHECK, the al. father, is not the son of YEE YIN DOCK, as claimed, and is therefore not a citizen of the U. S.

It will be noted that the present applicant states that his father's name is really YEE KAY SHUCK, which statement the al. father denies now as he has previously done.

I move that the applicant be denied admission to the U. S. for the reason that the evidence submitted does not satisfactorily establish either that the present applicant is a son of YEE QUING SHECK, as claimed, or that the latter is a citizen of the U. S. and also for the reason that the burden of proof has not been sustained as required by section No. 23, of the Immigration Act of 1924.

By Inspector LINWOOD.—I second the motion.

By Inspector McNAMMARRA.—I concur.

8/13/28.

PHYSICAL COMPARISON.

By Member PLUMLY.—I think there is a fairly good resemblance between the applicant and his al. father.

By Member OLIVER.—I can see a slight resem-

blance between the applicant and his al. father, but it is not striking in any particular feature.

By CHAIRMAN.—There is a similarity in the profiles of the applicant and his al. father; I see no resemblance in the general expressions of these two persons, and while there is no marked dissimilarity between them, I do not see sufficient resemblance to indicate the existence of relationship.

Filed Aug. 16, 1929. [16]

In the Southern Division of the United States
District Court, in and for the Northern Dis-
trict of California, Second Division.

No. 20,063-L.

In the Matter of YEE DONG TUN, on Habeas
Corpus.

SUPPLEMENTAL AMENDMENT TO PETI-
TION.

Comes now the attorney for the detained in the above-entitled matter and files this supplemental amendment to his said petition. Hereunto annexed is a copy of the report of the Board of Review, at Washington, D. C., and is filed herewith as Exhibit "C," as the same was approved by the Assistant to the Secretary of Labor, Washington, D. C.

The said exhibit is submitted herewith so that it might be read in connection with the petition for habeas corpus herein.

Dated at San Francisco, Calif., this 14th day of Sept., 1929.

GEO. A. MCGOWAN,
Attorney for the Detained. [17]

EXHIBIT "C."

55669/431 San Francisco, August 8, 1929.

In re: YEE DONG TUN, Aged 10.

This case comes before the Board of Review on appeal from a decision of a Board of Special Inquiry at San Francisco, denying admission as the son of a citizen of the United States. Both the citizenship of the alleged father and relationship are at issue.

Attorney Roger O'Donnell represents the applicant and filed a brief. Attorney W. H. Wilkinson represents the applicant at port.

The al. father, YEE QUING SHECK, was first admitted to the United States on Dec. 21, 1911, as the son of YEE YIN DOCK a court record native. He departed upon the trip essential to his paternity of a son claimed for the applicant on Nov. 21, 1916, and returned on Nov. 19, 1918. Upon his return he claimed a son named YEE CHUN, giving the birthdate now claimed for the applicant. The al. father departed upon his last trip to China on Nov. 13, 1926 and returned with the applicant. The applicant, the alleged father, and an identifying witness TANG HUNG SHUN have testified.

Two discrepancies have been recorded by the Chairman of the Board of Special Inquiry in his

summary between the testimony of the applicant and the alleged father in the present case. The applicant testified that an alleged cousin, YEE YOOK MING, was born in Canton City, that he never lived in the applicant's village, and that he has never seen YEE YOOK MING. The alleged father testified that this boy is now nine years of age, that he was born in the applicant's native village, and that he is now living there and attending school in that village but that the remainder of the family are living in Canton City. He stated that YEE YOOK MING was in the applicant's native village during the time the alleged father was last in China. [18]

The other discrepancy relates to the location of the schoolhouse in the applicant's native village. The alleged father has placed the schoolhouse on the row immediately next to their home, while the applicant placed the schoolhouse one row further away, stating that there is a row of houses intervening between the schoolhouse and his home.

Prior to the arrival at San Francisco of the applicant and his alleged father on July 11, 1928, there were received by the Commissioner at the port two letters, one written in English dated at Kwong Tung Toy Sien, China, April 20, 1928, and the other written in Chinese dated at Kew How Village, Sun Ning District, China, CR. 17-4-20 (June 7, 1928) said to be the applicant's birthplace. Both these letters are purported to have been written by Mrs. Yee Ying Duck, or Wong Shee, the mother of the YEE QUING SHECK and paternal grand-

mother of the applicant. The letter written in English states that "YEE KEE SAK" is not the son of the writer, and that the "small kid" he was bringing with him to the United States is not his son, but the son of one YEE KWONG UNG. The letter written in Chinese states that the deceased husband of the writer died in Pittsburgh, Pa., in CR. 15-1st-part of the 9th month (October, 1926) and that his remains were brought to China by uncle YEE QUON JEUNG, or YING HAY (Note: YEE QUON JEUNG appears to be a younger brother of the alleged deceased husband of the writer) arriving home on the 1st part of the 11th month (Dec. 1926). The writer stated that she had been informed by YEE QUON JEUNG that her deceased husband left the message before he died that YEE KAY SHUCK, or YEE GWONG LOOT, still owed \$700 of \$1500 the sum agreed upon to be paid to the said deceased husband if the said YEE KAY SHUCK, or YEE GWONG LOOT, was successful in gaining entrance into the United States. The writer also stated that YEE KAY SHUCK left his home village for HONGKONG on the 19th day of this month, CR. 17-4-19 (June 6, 1928) to return to the United States, that he brought with him a boy by the name of YEE CHONG [19] CHON, who is not the son of YEE KAY SHUCK, but the son of YEE KWONG NIN of KEW HOW VILLAGE, that YEE KAY SHUCK lives in the writer's village so that she knows positively that he has had three daughters but no sons, that his daughters did not live, that YEE KAY SHUCK,

marriage name YEE GWONG LOOT, is not the writer's son, that the writer has had only two sons the first son being named YEE YEN SOON, who returned to China from the United States in CR. 4 (1915) and died in CR. 5-6th month (July, 1916) and that the second son is named YEE YEN POY, who returned to China from the United States in CR. 5 (1916) and died in the 7th year (1918). The writer frankly states that she is giving this information because enmity towards KAY SHUCK.

The letters in question were sent by the Commissioner of Immigration at San Francisco to the American Consul General at Hongkong for the purpose of investigation there. The Consul General wrote to Mrs. Yee Ying Duck in KEW HOW VILLAGE, requesting that she come to Hongkong and appear before him. A reply was received stating that she was unable to come to Hongkong as she was suffering from rheumatism, but she gave the name of a Chinese in Hongkong whom she stated was a friend of her husband who could give the Consul such information as he needed. This person U. Fat reported to the Consul on October 23, 1928, and stated in response to questioning that Mrs. YEE YING DUCK had four sons, but he appeared to be unwilling to testify in details.

The applicant was advised of the contents of the letters purporting to have been written by his paternal grandmother. He had previously given his alleged father's name as YEE QUING SHECK or YEE GWONG LOOT, no others, and had stated

that he had never heard of a person by the name of YEE KAY SHUCK. He also testified in agreement with his alleged father that he had three brothers and one twin sister, the twin sister having died eight years ago. The applicant then testified that his alleged father, the man who brought him to the United States, is really named YEE KAY SHUCK, and that YEE KAY SHUCK, has [20] three daughters who died. He stated that YEE QUING SHECK is his father's record name and the name he uses to come to the United States. He denied that his father's name is YEE KWONG NIN (the name given in the letters purporting to have been written by the alleged grandmother as that of his real father). The alleged father has persistently denied that he has ever been known by the name of YEE KAY SHUCK. The applicant also testified that he does not know the name of his paternal grandfather, and that the person he previously named as his paternal grandfather was not his own grandfather. The applicant also testified that his paternal grandmother died about three years ago in his home in China. He had previously testified that his paternal grandmother is now living in China. The applicant testified that he had another brother at home, a younger brother. He gave the younger brother's name and age as YEE OTT CHOON, 7 years old, and stated that he had no other brothers. He was reminded that he previously testified that he had three *brother* now living and stated: "I never said I had three brothers, I made a mistake when I said I had one brother

at home and they are both younger than I." He was asked: "Are you positive that you have never had more than two brothers?" and answered: "I have three brothers in all, I just forgot to mention my little brother."

It is not thought that the letters are actually in the handwriting of Mrs. Yee Ying Duck as this woman was an applicant for admission in 1924 and when then examined the record showed that she was unable to write.

The alleged father of the applicant testified in the present case regarding the whereabouts of two al. brothers whom he named as YEE GWING SOON and YEE GWING POY, stating that they are now in Canton City and said that he saw and talked to YEE GWING SOON in 1927 when the latter came home to visit the ancestral graves in 1924, the al. paternal grandfather, upon the basis of whose activity the al. father of the [21] applicant was admitted, produced letters to show that YEE GWING POY & YEE GWING SOON had been killed during battle during that year.

It is apparent, and it has been conceded by the Consul, that the applicant when confronted with the letters said to be from his paternal grandmother attempted to change his testimony to correspond somewhat with these letters regardless of the truth of the same. Just wherein the truth lies it is impossible to determine. It is believed that in spite of his youth the testimony of the applicant must be considered to be discredited. Apart from the information contained in the letters purporting to be

from the alleged paternal grandmother it is thought that the discrepancy in testimony concerning the existence and whereabouts of the two alleged paternal uncles of the applicant when compared with the evidence produced by the al. paternal grandfather that these two paternal uncles were killed in 1924, rises a serious doubt concerning the citizenship of the alleged father of the applicant.

It is not thought that either citizenship or relationship can be held to be reasonably sustained. It is recommended that the appeal be dismissed.

(Sgd.) L. PAUL WINNINGS,
Chairman Secy. & Comr. Genls. Board of Review.
GYP:ws.

So ordered.

P. F. SNYDER,
Asst. to Secy.

Filed Sep. 14, 1929.

Service of the within supplemental amendment to petn. by copy admitted this 14 day of Sept. 1929.

GEO. J. HATFIELD,
Attorney for ————. [22]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

Good cause appearing therefor, and upon reading the verified petition on file herein:

IT IS HEREBY ORDERED that John D. Nagle, Commissioner of Immigration for the Port of San

Francisco, appear before this court on the 26th day of Aug., 1929, at the hour of 10:00 A. M. of said day, to show cause, if any he has, why a writ of habeas corpus should not issue herein, as prayed for, and that a copy of this order be served upon said Commissioner, and copy of the petition and said order be served upon the U. S. Attorney for this District, his representative herein.

AND IT IS FURTHER ORDERED that the said John D. Nagle, Commissioner of Immigration, as aforesaid, or whoever, acting under the orders of the said Commissioner, or the Secretary of Labor, shall have the custody of the said YEE DONG TUN, or the master of any steamer upon which he may have been placed for deportation by the said Commissioner are hereby ordered and directed to retain said YEE DONG TUN within jurisdiction of this Court until its further order herein.

AND IT IS FURTHER ORDERED that the said John D. Nagle, Commissioner of Immigration, present at said time, the immigration records of the Department of Labor bearing upon said case, for the enlightenment of the court and comply with Section 23 of the Immigration Act of 1924.

Dated at San Francisco, Calif., this 16th day of August, 1929. [23]

HAROLD LOUDERBACK,

U. S. District Judge.

Filed Aug. 16, 1929. [24]

[Title of Court and Cause.]

APPEARANCE OF RESPONDENT AND NOTICE OF FILING EXCERPTS OF TESTIMONY FROM THE ORIGINAL IMMIGRATION RECORD.

To the Petitioner in the Above-entitled Matter,
and to George A. McGowan, Esq., His Attorney:

PLEASE TAKE NOTICE that the respondent hereby appears in the above-entitled matter, and will upon the hearing on the order to show cause rely upon certain excerpts of testimony from the original immigration record additional to the portions of said records which are set out in the petition for writ of habeas corpus herein, a copy of such additional excerpts being annexed hereto. Please examine same prior to the hearing on the order to show cause.

Dated:

GEO. J. HATFIELD,
United States Attorney,
(Attorney for Respondent.)
Per W. A. O'B. [25]

[Title of Court and Cause.]

RESPONDENT'S MEMORANDUM OF EX-
CERPTS OF TESTIMONY FROM THE
ORIGINAL IMMIGRATION RECORD.

The witnesses herein are:

YEE DONG TUN, the applicant, born October 30, 1917, never in the United States.

YEE QUING SHECK, alleged father of the applicant, age 37, first came to the United States December 29, 1911, and was admitted as the foreign-born son of Yee Yin Ock, (Dock), a citizen of the United States; was back in China from November, 1916, to October, 1918, from September, 1921, to October, 1922, and from November, 1926, to June, 1928.

TANG HUNG SHUN, no relationship to applicant, and comes from a different village but claims to have visited applicant's home in China once, May 30th, 1928.

Both the American citizenship of the alleged father and the relationship of the applicant to his alleged father are in dispute. We quote below, from the original immigration record, some of the conflicting evidence:

I.

YEE QUING SHECK, testified on August 10, 1928, as follows:

“Q. What are all your names?

A. YEE QUING SHECK and YEE QUONG LOOK, no others.

Q. Have you ever at any time been known by any other name than those you have given?

A. No.”

(Immig. Record No. 55669/421, p. 12.) [26]

“Q. What is your age and where were you born?

A. Age 37, born in the Kew How Village, SND, China.”

* * * * *

“Q. What is your father’s name?

A. Yee Ying Ock and Yee Sing Jeung, no others.”

(Id., p. 12.)

“Q. What is your mother’s name?

A. Wong Shee.

Q. Where is she?

A. Now living at home in the Kew How Village.”

(Id., p. 13.)

“Q. Have you ever been known by the name of Yee Kay Shuck? A. No.

Q. Do you know why anyone should refer to you by that name?

A. I do not know why.”

(Id., p. 29.) [27]

“Q. What family have you?

A. A wife and four sons; I also had a daughter who died.

Q. Describe your wife and child.

A. Lim Shee, age 32, natural feet, now living in the Kew How Village; my sons are: Yee Dong Tun, age 12, born CR. 6-9-15, (Oct. 30, 1917) he is the applicant. Yee Bok Tun, age 10, born Cr. 8-4-2 (May 1, 1919) now living in the home village. Yee Ott Tun, age 7, born CR. 11-7-18 (Sept. 9, 1922), now living in the home village. Yee Bok Hock, age 1, born CR. 17-1-30 (changes) 1-29 (Feb. 20, 1928) now in the home village. My daughter was Yee Gee Yip, she is a twin to applicant, and she died eight years ago in the home village.

Q. How old was your daughter when she died? A. About 4 yrs. old."

(Id., p. 15.)

And on April 27, 1929, as follows:

"Q. What are all your names?

A. My boyhood name is Yee Quong Shock, my marriage name is Yee Quong Look.

Q. Have you ever used any other name?

A. No.

Q. * * * "

"Q. Have you ever used any other name for business purposes? A. No.

Q. When and where were you born?

A. I was born at Que How Village, SND, China, KS. 18-1-10, I am 38 years old.

Q. When did you first come to the United States?

A. HT 3-10-10 (1911) SS. 'Shinyo Maru'

admitted as the son of a native of San Francisco."

* * * * *

"Q. What was your father's name?

A. Yee Sing Jung.

Q. Did he have any other name?

A. His boyhood name Yee Ying Ott."

(Id., p. 81.)

"Q. What is your mother's name?

A. Wong Shee, bound feet, age over 60, at present at Que How Village."

(Id., p. 82.)

"Q. Is your mother still living? A. Yes.

Q. How many children have you now in China?

A. I still have three sons at home in China. I have four boys, including the applicant, who is at present at San Francisco, the applicant is the oldest, next is Yee Bak Choon, age 11, Yee Otto Choon, age 8, and Yee Bak Hog, age 2, one girl born with my oldest son Yee Dong Tun, but she is dead, her name was Yee Kee Yick."

* * * * *

[28]

"Q. Were you ever known by the name of Yee Kay Shuck? A. No.

Q. Did any of your children ever call you by that name?

A. No, my children all call me father."

(Id., p. 83.)

YEE DONG TUN, testified on August 13, 1928, as follows:

“Q. What are the names of your father’s parents?

A. Yee Ying Ock, his father, he died about 3 years ago in this country; Wong Shee, his mother, living in my home village in China.

Q. What other name has your paternal grandfather?

A. His marriage name is Yee Sing Jeung.”
(Id., p. 22.)

“Q. Do you know a person by the name of Yee Kay Shuck? A. No.

Q. Did you ever hear of a person by that name? A. No.”

(Id., p. 28.)

And on April 10, 1929:

“Q. What is your father’s name?

A. Yee Quing Sheek.

Q. What other names has your father?

A. His marriage name is Yee Quong Loot.

Q. What other names has your father?

A. He has no other names.”

(Id., p. 72.)

“Q. Do you know anyone by the name of Yee Kay Shuck? A. No.

Q. Information has been furnished to this office that the person who brought you to the United States is named Yee Kay Shuck?

A. No he is not.

NOTE: Applicant is read contents of letter signed ‘Mrs. Yee Ying Duck,’ or ‘Wong Shee,’

or 'Yee Wong Shee,' dated at Kew How Village, Hoy San District, Kwongtung Province, China, CR. 17-4-20, which is contained in S. F. file File No. 27028/3-6.

(To APPLICANT.)

Q. Have you any comment to make on the contents of this letter?

A. I am really Kay Shuck's son—I have another brother at home—a younger brother. It is true that Kay Shuck has three daughters that did not live.

Q. To whom do you refer as 'Kay Shuck'?

A. That is my father, the man that brought me here.

Q. You previously stated that you did not know anyone by the name of 'Yee Kay Shuck'; is that your father's true name?

A. Yes, Yee Kay Shuck is my father's true name.

Q. Had you been instructed to say that you did not know anyone by the name of 'Yee Kay Shuck'; or, what did you make that statement?

A. No, but I forgot that my father's name was Yee Kay Shuck a little while ago.

Q. Who is Yee Quing Sheck, whom you previously mentioned as your father?

A. That is my father's record name; that is, Yee Quing Sheck is the name in my father's paper, which he uses to come to the United States. [29]

Q. Who is the father of Yee Kay Shuck?

A. I don't remember.

Q. Who is the mother of Yee Kay Shuck?

A. Wong Shee.

Q. Is she living? A. No, she is dead.

Q. Did you ever see her? A. Yes.

Q. When and where did she die?

A. She died year before last in our house in the Kew How Village, China.

Q. Did you ever see your paternal grandfather—that is, the father of Yee Kay Shuck?

A. No.

Q. Did you ever hear his name? A. No.

Q. When you previously testified you gave two names for your paternal grandfather; do you mean that the person you named then is not actually your paternal grandfather?

A. He was not my grandfather.

Q. What is the name and age of the brother you now state you have at home?

A. He is: Yee Ott Choon—7 years old.

Q. Did you ever have any other brothers?

A. No.

Q. Describe the three daughters of Yee Kay Shuck?

A. I cannot remember any of them now.

Q. Were these three girls older or younger than you?

A. One was older—and the other two were younger than I.

Q. When did your two younger sisters die?

A. They died a good while ago—I don't know when they died.

Q. Do you remember of having seen your two younger sisters?

A. No. (Changes.) Yes, I remember seeing my two younger sisters when I was very little—and my mother has also mentioned them to me. I never say my eldest sister.

Q. When you previously testified, you stated that you had three brothers now living. Were you instructed by someone to make a statement to that effect?

A. No, I never said that I had three brothers. I made a mistake when I said that I had one brother at home—I really have two brothers at home, and they are both younger than I.

Q. Are you positive that you have never had more than two brothers?

A. No, I have three brothers in all—I just forgot to mention my little brother.

NOTE: Applicant is read contents of letter signed 'Mrs. Yee Ying Tak,' and dated at Kwongtung, Toy Sun, China, April 20, 1928, which is contained in S. F. File No. 27028/3-6.

To APPLICANT:

Q. Have you any comment to make on that letter? A. No.

Q. Have you understood the interpreter?

A. Yes (Thru Lee Park Lin.) [30]

INTERPRETER.—Lee Park Lin reads to applicant transcript of applicant's statement made at the present hearing.

TO APPLICANT:

Q. Is this record, which has just been read to you, a true record of your statement made today? A. Yes."

(Id., pp. 73, 74.)

II.

On August 5, 1924, YEE HING OCK (DOCK), alleged father of Yee Quing Sheck and alleged grandfather of the applicant YEE DONG TUN, testified as follows:

"Q. Where is Yee Quing Soon now?

A. He is a clerk on the Treasury Department of the Canton City Government.

Q. Where is your third son Yee Gwing Poy now?

A. In Canton City with my oldest son."

(Immig. Record 12017/30618, p. 15.)

And on August 6, 1924, as follows:

"Q. How long has Yee Quing Soon the father of Yee Yook Hon been in the Government service in Canton City?

A. I think 4 or 5 years."

(Id., p. 12.)

On December 9, 1924, YEE HING OCK (DOCK) presented to the immigration authorities two letters addressed to him and signed respectively "Your Nephew Him Wo" and "Your Nephew Yok Doon." The first of these letters contained the following:

"Recently on account of the brutality of Cho Ng which cause Lo of Chikang to raise his flag against them at Shanghai North. Your oldest

son, Gwin Soon and third son, Gwing Poy, who always considered as patriotism, they left for the north and join the Ghikang Army in order that their service may be rendered as a true lover of our country, and that their names may be spread over all men. But the most sadful thing was that God is not right, killed them in a battle at Lew Hor before they can accomplish anything. This is what I call 'I wish not to live should I hurt others, but willing to die in order to help others.' These are the edicts for your sons, and they are considered as they are still living even they are dead, same as those heroes who are now buried at the Wong-Far Hill."

(Id., 64.)

The second letter contained the following:

"Your grandson, Yoke Hun, and his grandmother, who left Hongkong on the SS. 'President Lincoln' for America some time ago, they must have safely landed. But your oldest son, Gwing Soon, and third son, Gwing Poy, they were two young braves in the Army, they were aware of the dangers of the country and angry over the Militaristic brutes, they have desire to remove all the wickedness and thrash out the bad ones, that was the reason they joined the Army. [31]

"Unfortunately, Heaven despises heroes, destroy them before their objects are accomplished, it was happened only a few days in the fight between the armies of the Kang Shu and

Chikang. Alas, my tears cannot stop flowing. These two men have gave their life for the country, and are classed as men of faithfulness and braveness, even though they are dead, but they are as of living.

“The calamity met with these two men not quite two months since they left toward the north, therefore it created a big sympathy among all people over their dead. Your daughters-in-law have not yet learned the information of these two mens deaths. The reason of breaking the news to them is for fear that it may give them an unlimited grief. I was intended to keep the matter unknown to you, but as we are of the same tribe I am compelled to do so. However, I hope you will not overgrieve with this news for they are dead and cannot be brought alive again. And their dead are of the true braveness, all men should worship them as example. Please do not break the news to Koke Hun’s grandmother for she is a woman, should she ever hear of the death of her two sons, her age may not stand the shock and grief. Therefore the news should not be broken to her.”

(Id., p. 63.)

YEE QUING SHECK testified on August 10, 1928, as follows:

“Q. Give the names, ages and whereabouts of your brothers.

A. Yee Quing Soon, age 39, now in Canton

City, China. Yee Quing Poy, age 31, now in Canton City, China. Yee Quing Mee, age 18, he is somewhere in the eastern part of the U. S.

* * * * *

Q. What is Yee Quing Soon's occupation?

A. He is a real estate broker in Canton City.

Q. With what firm is he connected?

A. None, he is in business by himself.

Q. Under what firm name does he do business? A. No firm under his own name.

Q. What is his address in Canton?

A. He lives in the Ging AI Social Hall in the Section called Shew Mar Jam in Canton City.

Q. How many times did you see your brother Yee Quing Soon during your last visit to China? A. I did not see him at all.

Q. How do you know he is in Canton then?

A. His family told me.

Q. What address would be given for him if a client wished to find him?

A. The address I just gave. I recall that my brother Yee Quing Soon came home to visit the ancestral graves last year.

Q. Did you see him at the time? A. Yes.

Q. Did you talk to him? A. Yes.

Q. In what year was that?

A. CR. 16 (1927)."

(Immig. Record 55669/421, pp. 13, 14.) [32]

"Q. When did Yee Quing Poy and his family move to Canton City?

A. I do not know, I was in the U. S.

Q. What is Yee Quing Poy's occupation at present?

A. He opened an American drug-store by the name of Yim Ock Drug Co., his wife is a doctor.

Q. What is the address of his drug-store?

A. I do not know, I have never been there.

Q. How many times did you meet Yee Quing Poy during your last visit to China?

A. Not at all.

Q. When and where did you last see your third brother Yee Quing Poy?

A. It was in CR. 11 9th month in the Kew How Village, that was the time I took his son Yee Yook Sin to the U. S.

Q. How do you happen to know Yee Quing Poy is now in Canton City?

A. My mother told me.

Q. When did she tell you that?

A. The last time I was in the home village, I forget just when.

Q. How long has Yee Quing Poy been engaged in his present occupation?

A. I do not know after his marriage he opened an American drug-store in Ick Hoy Market but I do not know when he moved to Canton City.

Q. Where was he living when you last saw him in CR. 11?

A. He was living in Canton City then.

Q. Has Yee Quing Poy ever worked in any of the Government offices in China? A. No.

Q. Has he ever been in the Chinese army or any of the Chinese revolutionary forces?

A. I do not know.

Q. Has Yee Quing Soon ever been in the Chinese Army or any of the Chinese revolutionary forces? A. No.

Q. Has Yee Quing Soon ever worked in any other Chinese Government offices? A. No.”

(Id., p. 15.)

And on April 27, 1929, as follows:

“Q. What are the names of your brothers and where are they at the present time?

A. First is Yee Quing Soon, age 40, at present in China, the second is myself, third is Yee Quing Poi, age 32, at present in China, fourth is Yee Quing Mee, 19 years old, at present in the United States. I don't know what city.

Q. What did your two brothers do who are in China?

A. While I was in China, they were both real estate agents in Canton City.”

(Id., p. 82.)

III.

YEE QUING SHECK, testified on August 10, 1928, as follows:

“Q. What family has your third brother Yee Quing Poy?

A. He has a wife, three sons and no daughters.

Q. Describe his wife and family?

A. Hom Shee, about 30, natural feet, now living in Canton City; the sons are: Yee Yook

Sin, age 13, now somewhere in the eastern part of the U. S. Yee Yook Ming, age 9, now living in the Kew How Village. Yee Yook Ting, age 7, now living in Canton City with his mother. [33]

Q. How is it that Yee Quing Poy's second son is living in the Kew How Village instead of with his mother?

A. Because that son wanted to attend school in the home village.

Q. How long has Yee Yook Ming been living in the Kew How Village?

A. I do not know, he was born in the Kew How Village but the last time I was at home in China he lived at home in the Kew How Village."

(Immig. Rcd. 55669/421, pp. 14, 15.)

"Q. In what house is your mother living?

A. In the second house, 2d row from the north.

Q. Who is living in the same house with your mother?

A. The wife of my brother Yee Quing Soon and her two sons and also my nephew Yee Yook Ming, who is the son of my brother Yee Quing Poy."

(Id., p. 16.)

YEE DONG TUN testified on August 13, 1928, as follows:

"Q. What is your birth date?

A. CR. 6-9-15 (Oct. 30, 1917) in the Kew How Village, S. N. D., China.

Q. Have you ever lived in any other village?

A. No."

(Id., p. 21.)

"Q. Describe Yee Quing Poy's children?

A. They are: Yee Yook Sin—I don't know his age. I never saw him. Yee Yook Ming—I don't know his age. I never saw him. Yee Yook Foo—I don't know his age. I never saw him."

* * * * *

"Q. Have you any idea how old Yee Yook Ming is?

A. No, I don't know—he was born in Canton City.

Q. And Yee Yook Ming never lived in the Kew How village? A. No."

* * * * *

"Q. Has Yee Yook Sin ever lived in the Kew How Village? A. Yes.

Q. You said you had never seen him; how is that?

A. I meant that I would not be able to recognize him, because he moved away to Canton City about five or six years ago.

Q. When you said that you had never seen Yee Yook Ming, did you mean that you would not be able to recognize him, or did you mean that you had never seen him?

A. I meant that I would not be able to recognize him; I mean Yee Yook Sin. I have never seen Yee Yook Ming at all."

(Id., p. 24.) [34]

IV.

YEE QUING SHECK testified on August 11, 1928, as follows:

“Q. Did your oldest son, the applicant, ever attend school in China?

A. He has attended school for two years in the Kew How Village. He quit at the end of CR. 16, (1927).

Q. Where is the schoolhouse located in the Kew How Village?

A. The first space, fourth row counting from north.”

(Id., p. 18.)

And on August 13, 1928, as follows:

“Q. You stated that the schoolhouse in your native village, the Kew How Village, is located on the first space, fourth row, counting from the north. Is that schoolhouse on the row immediately next to the one in which your wife lives? A. Yes.”

(Id., p. 28.)

YEE DONG TUN testified on August 13, 1928, as follows:

“Q. How large is your native village, the Kew How Village?

A. It has about 25 houses in it.”

Q. * * * ”

“Q. Do you know how many rows of houses there are in your village?

A. Yes, there are five rows.

Q. Can you state where your house is located in the village?

A. It is the 3d house, on the 1st row, at the left or south.

Q. Did you ever live in any other house?

A. No."

(*Id.*, p. 25.)

"Q. Did you ever attend school outside of the Kew How Village?

A. No, I have always attended school in my home village.

Q. Where is the schoolhouse located in your native village?

A. It is located on the third row, or middle row, on the first space of that row.

Q. How many rows of houses are there between your house and the row where the schoolhouse is located?

A. There is just one row between my house and the school.

Q. Do you mean that the schoolhouse is in the next to yours, or that there is a row between your row and the row in which the schoolhouse is located?

A. I mean that there is one row between the schoolhouse row and my row.

Q. How many schoolhouses are there in the Kew How Village? A. Only one."

(*Id.*, p. 27.)

GEO. J. HATFIELD,
United States Attorney,
(Attorney for Respondent.)
Per W. A. O'B. [35]

[Endorsed]: Service of the within — by copy admitted this — day of ———, 1929.

GEO. A. McGOWAN,
Attorney for Pet.

Filed Sep. 30, 1929. [36]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 5th day of November, in the year of our Lord one thousand nine hundred and twenty-nine. Present: The Honorable HAROLD LOUDERBACK, District Judge.

[Title of Cause.]

MINUTES OF COURT—NOVEMBER 5, 1929—
ORDER DENYING PETITION FOR WRIT
OF HABEAS CORPUS.

The petition for writ of habeas corpus, having been heretofore argued and submitted, and due consideration having been thereon had, IT IS ORDERED that said petition for writ of habeas corpus be and the same is hereby denied. [37]

[Title of Court and Cause.]

SUBSTITUTION OF ATTORNEYS.

I hereby consent to the substitution of Eddy Knapp in my place and stead, and request, authorize and direct the Court and Clerk thereof to take notice hereof and permit said Eddy Knapp to act as attorney for the detained and for the petitioner herein.

GEO. A. MCGOWAN.

I consent to and accept the above substitution and hereby enter my appearance for the petitioner.

EDDY KNAPP.

Nov. 7th, 1929.

Rec'd copy of above substitution.

GEO. J. HATFIELD,
U. S. Attorney.

Nov. 7th, 1929.

Filed Nov. 7, 1929. [38]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Clerk of the Above-entitled Court, to JOHN D. NAGLE, Commissioner of Immigration, and to GEORGE J. HATFIELD, Esq., United States Attorney, His Attorney:

You and each of you will please take notice that Yee Sing Jong, the petitioner in the above-entitled

matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the order and judgment rendered, made and entered herein on November 5, 1929, sustaining the demurrer to and denying the petition for a writ of habeas corpus filed herein.

Dated this 7th day of November, 1929.

EDDY KNAPP,

(Signature.)

Attorney for Petitioner.

Service and receipt of a copy of the within notice of appeal is hereby admitted this 12 day of Nov. A. D. 1929.

GEO. J. HATFIELD,

Attorney for _____.

Filed Nov. 14, 1929. [39]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now Yee Sing Jong, the petitioner in the above-entitled matter, through his attorney, Eddy Knapp, and respectfully shows:

That on the 5th day of November, 1929, the above-entitled court made and entered its order denying the petition for a writ of habeas corpus, as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will more

fully appear from the assignment of errors filed herewith.

WHEREFORE the appellant prays that an appeal may be granted in his behalf to the Circuit Court of Appeals of the United States for the Ninth Circuit thereof, for the correction of the errors as complained of, and further, that a transcript of record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof, and further, that the said appellant be held within the jurisdiction of this Court during the pendency of the appeal herein, so that he may be produced in execution of whatever judgment may be finally entered herein.

Dated at San Francisco, California, November 6th, 1929.

EDDY KNAPP,

(Signature)

Attorney for Petitioner. [40]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes the appellant, Yee Sing Jong, through his attorney, Eddy Knapp, Esq., and sets forth the errors he claims the above-entitled court committed in denying his petition for a writ of habeas corpus, as follows:

I.

That the Court erred in not granting the writ of habeas corpus and discharging the detained applicant, said Yee Dong Tun, from the custody and control of John D. Nagle, Commissioner of Immigration at the Port of San Francisco.

II.

That the Court erred in sustaining the demurrer interposed to the petition for a writ of habeas corpus on file herein.

III.

That the Court erred in not holding that it had jurisdiction to issue the writ of habeas corpus in the above-entitled cause as prayed for in the petition on file herein.

IV.

That the Court erred in not holding that the allegations set forth in the petition for a writ of habeas corpus were sufficient, in law, to justify the granting and issuing of a writ of habeas corpus.

V.

That the Court erred in holding that the claimed discrepancies between the testimony of the alleged father of the [41] applicant and that of the said applicant Yee Dong Tun, as *as* result of the evidence adduced before the immigration authorities, were sufficient, in law, to justify the conclusion of the immigration authorities that the claimed relationship between the alleged father of said applicant and applicant did not exist.

VI.

That the Court erred in not holding that the claimed discrepancies between the testimony of the alleged father of the said applicant and that of the said applicant Yee Dong Tun, as a result of the evidence adduced before the immigration authorities, were not sufficient, in law, to justify the conclusion of the immigration authorities that the claimed relationship between the alleged father of said applicant and said applicant did not exist.

VII.

That the Court erred in holding that the claimed discrepancies, or any of them, between the testimony of the alleged father of said applicant and that of the said applicant, as a result of the evidence adduced before the immigration authorities, were not subject to a reasonable explanation and reconcilable.

VIII.

That the Court erred in not holding that any and all of the claimed discrepancies between the testimony of the alleged father of said applicant and that of the said applicant, Yee Dong Tun, as a result of the evidence adduced before the immigration authorities, was or were subject to a reasonable explanation and reconcilable.

IX.

That the Court erred in holding that the evidence adduced before the immigration authorities was not sufficient, in kind and character, to warrant a finding by the immigration authorities that the

claimed relationship between the alleged father of said applicant and said applicant existed. [42]

X.

That the Court erred in not holding that the evidence adduced before the immigration authorities was sufficient, in kind and character, to warrant a finding by the immigration authorities that the claimed relationship between the alleged father of said applicant and said applicant Yee Dong Tun existed.

XI.

That the Court erred in holding, as and for the reasons hereinbefore specified, that the said applicant Yee Dong Tun was accorded a full and fair hearing before the immigration authorities.

XII.

That the Court erred in not holding, as and for the reasons hereinbefore specified, that the appellant was not accorded a full and fair hearing before the immigration authorities.

XIII.

The Court erred in holding that the immigration authorities acted fairly and were not unfair in the use made by them of letters not proven to be those of the party whose name was appended to them, to wit, in reading them to the applicant as genuine sources of information regarding the family of applicant, Yee Dong Tun, and in introducing them in evidence without proof of their authenticity.

XIV.

The Court erred in holding that the immigration

authorities acted fairly and were not unfair to applicant Yee Dong Tun, in failing to allow said applicant an opportunity to refute and disprove the authorship of letters to which his grandmother's name was appended.

XV.

The Court erred in holding that the applicant Yee Dong Tun was fairly treated by the U. S. Immigration Service and that the examination was fairly conducted in the introduction of letters to his grandfather from persons unknown as to the [43] death of his the applicant's father's two brothers, and in introducing the testimony of said grandfather based on such hearsay information as said letters gave with reference to their death, and treating this as a contradiction of the applicant's testimony to the contrary.

XVI.

The Court erred in holding that the Immigration Service dealt fairly and were not unfair to said applicant Yee Dong Tun in putting leading questions and questions suggesting answers to him, and leading him to believe that his grandmother had given information contrary to the testimony that he and his father had given.

XVII.

The Court erred in holding and deciding that the proceedings before and the action taken by the Secretary of Labor and the Commissioner of Immigration were and constituted due process of law and were according to the law of the land.

WHEREFORE appellant prays that the said order and judgment of the United States District Court for the Northern District of California made herein, and given and entered herein in the office of the Clerk of said court on the 5th day of November, 1929, denying his said petition for a writ of habeas corpus in behalf of said detained, to wit, said applicant Yee Dong Tun, be reversed and the said Yee Dong Tun be restored to his liberty and go hence without day.

EDDY KNAPP,
(Signature)

Attorney for Petitioner and Appellant.

November 7th, 1929.

Service and receipt of a copy of the within petition is hereby admitted this 12 day of Nov., A. D. 1929.

GEO. J. HATFIELD,
Attorney for _____.

Filed Nov. 14, 1929. [44]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

It appearing to the above court that Yee Sing Jong, petitioner herein, has this day filed and presented to the said Court his petition praying for an order of this Court, allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of this Court deny-

ing a writ of habeas corpus herein on behalf of one Yee Dong Tun, detained by appellee, and dismissing his petition for said writ, and good cause appearing therefor,—

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein, and—

IT IS HEREBY FURTHER ORDERED that the Clerk of this above-entitled court prepare and make a transcript of all papers, records and proceedings in the above-entitled matter and transmit the same to the said United States Circuit Court of Appeals for the Ninth Circuit, within the time allowed by law.

IT IS FURTHER ORDERED that the execution of the warrant of deportation and the deportation of said Yee Dong Tun be and the same is hereby stayed pending this said appeal, and that the said Yee Dong Tun be not removed from the jurisdiction of this court pending the said appeal.

Dated at San Francisco, California, November 12th, 1929.

HAROLD LOUDERBACK,
United States District Judge.

Due service and receipt of a copy of the within order allowing appeal is hereby admitted this 12th day of November, A. D. [45] 1929.

GEO. J. HATFIELD,
Attorney for _____.

Filed Nov. 14, 1929. [46]

[Title of Court and Cause.]

ORDER TRANSMITTING ORIGINAL EXHIBITS.

Good cause appearing therefor, now, on motion of Mr. Knapp, counsel for appellant,—

IT IS HEREBY CONSIDERED AND ORDERED, that the immigration records filed and used as exhibits upon the hearing of the demurrer in the above-entitled matter be transmitted to the Clerk of the United States Circuit Court of Appeals and filed with said Clerk by the Clerk of the said District Court, to be taken and treated as a part of the record on appeal to said Circuit Court of Appeals of the United States for the Ninth Circuit herein from the order of this court in the above-entitled cause, with the same force and effect as if embodied in the transcript of the record, and so certified by the said Clerk of this court.

Dated November 12th, 1929.

HAROLD LOUDERBACK,
United States District Judge.

Service and receipt of a copy of the within order is hereby admitted this 12 day of Nov., A. D. 1929.

GEO. J. HATFIELD,
Attorney for _____.

Filed Nov. 14, 1929. [47]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 47 pages, numbered from 1 to 47, inclusive, contain a full, true and correct transcript of the records and proceedings in the Matter of Yee Dong Tun, on Habeas Corpus, No. 20,063-L., as the same now remain on file of record in this office.

I further certify that the cost for preparing and certifying the foregoing *apostles on appeal* is the sum of Nineteen Dollars and Twenty-five Cents (\$19.25), and that the same has been paid to me by the attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of December A. D., 1929.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [48]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

The President of these United States, to JOHN D. NAGLE, Commissioner of Immigration, Port of San Francisco, and GEO. J. HATFIELD, Esq., United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco, in the State of California, within 30 days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California (Southern Division), wherein Yee Sing Jong (on behalf of Yee Dong Tun, detained), is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in said order allowing the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Hon. HAROLD LOUDERBACK, United States Judge for the Southern Division of the Northern District of California, this 12th day of November, 1929.

HAROLD LOUDERBACK,
United States District Judge. [49]

Service and receipt of a copy of the within citation is hereby admitted this 14 day of Nov., A. D. 1929.

GEO. J. HATFIELD,
Attorney for _____.

[Endorsed]: Filed Nov. 14, 1929. [50]

[Endorsed]: No. 6012. United States Circuit Court of Appeals for the Ninth Circuit. Yee Sing Jong, on Behalf of Yee Dong Tun, Detained, Appellant, vs. John D. Nagle, Commissioner of Immigration, Port of San Francisco, California, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed December 12, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

